TESTIMONY

OF THE

NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

BEFORE THE

House Energy and Commerce Committee

Subcommittee on Health

on

The Health Care Choice Act of 2005

Presented by:

The Honorable Mike Kreidler

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Introduction

Good morning Mister Chairman. My name is Mike Kreidler, Commissioner of the Washington State Office of Insurance. I am testifying today on behalf of the National Association of Insurance Commissioners (NAIC). The NAIC represents the chief insurance regulators from the 50 States, the District of Columbia, and five U.S. territories. The primary objective of insurance regulators is to protect consumers and it is with this goal in mind that I comment today generally on the current uninsured crisis, and in particular the "Health Care Choice Act of 2005."

To begin, I will emphasize the commissioners' recognition of how important it is to ensure affordable, available health coverage for all Americans and offer the full support of the NAIC in developing legislation that will reach these goals. States have acted aggressively over the past fifteen years to stabilize and improve the individual health insurance market. Most notably, thirty-one States have created high-risk pools, providing a safety net for over 170,000 people with chronic illnesses and other pre-existing conditions. The State high-risk pools collect almost $650 million pear year in premiums and pay over $1 billion in claims. This subsidized coverage has proven critical to individuals and families with high medical expenses and to the stability of the individual health insurance market.

As an aside, the NAIC continues to support legislation at the federal level that would expand and extend the high-risk pool grants created in the Trade Act of 2002. We applaud Representative Shadegg for introducing such a bill in the 108th Congress. The Senate Health, Education, Labor and Pensions Committee has already acted this year on legislation – we encourage the House act soon on what has become an important subsidy for high-risk individuals.

States continue to experiment with other strategies for making health insurance more affordable for individuals, including: reinsurance, tax credits, subsidies, basic health plans, and programs to promote healthier lifestyles and manage diseases. As always, States are the laboratories for innovative ideas. It is critical that the federal government and the States work closely with healthcare providers, insurers and consumers to implement true reforms that will curb spending and make insurance more affordable.

Concerns About the Health Care Choice Act

The nation's health insurance regulators cannot support federal legislation that would disadvantage higher-risk individuals or preempt critical consumer protections. This is why the NAIC opposes Association Health Plan legislation and why we do not support the Health Care Choice Act of 2005, H.R. 2355. While we appreciate attempts by the author to preserve some level of State oversight, we must emphasize that it is poor public policy to allow the sale of health insurance in a State without oversight of the resident regulator. Such a policy is an open invitation to fraud and abuse.

As currently drafted, H.R. 2355 would allow an insurance company to choose a single State in which to license its individual health insurance product and then sell it in any other State, avoiding that State's laws and regulations. This would clearly promote a "race to the bottom" as insurers would be greatly rewarded for licensing their individual products in States with less regulation and fewer personnel to oversee what could be a large influx of new products.

State insurance commissioners acknowledge there are many challenges facing the individual health insurance market. In response, many States have adopted NAIC model laws that provide strong consumer protection and product standards that ensure consumers receive value for premiums paid. Unfortunately, not all States have adopted these models. Therefore, we are concerned that health insurers will seek those States with lower standards for their product approvals. In essence, this bill would undermine efforts by States to improve insurance coverage. Speed to market is important, but valueless products do more harm to consumers and the market overall.

For example, most States have enacted laws limiting preexisting condition exclusions. Many States have implemented rating limits to ensure the higher costs of sicker consumers are spread across the population. Some States have created reinsurance mechanisms to spread the risk among insurers. States have also enacted important consumer protections to ensure access to providers. H.R. 2355 would undermine all of these protections, wiping out any progress that has been made on behalf of consumers.

In addition, if H.R. 2355 were enacted State regulators would be unable to assist their own constituents, leaving consumers to seek assistance from the insurer's home State. While that may be a theoretical possibility, in the real world of tight State budgets it will be virtually impossible to assist a nonresident consumer in a distant State. And the home State of the consumer will be unable to assist, as it has no jurisdiction over a company not licensed in the State. Also, the fragile individual health insurance market would be disrupted, as properly licensed insurance companies would be forced to compete on an unlevel playing field. Specifically, small and regional insurers would be disadvantaged by large national companies entering States with inferior products and unregulated rates.

While we understand the desire of the bill's supporters to make health insurance more accessible to individuals, we remain concerned that this bill would do great harm to those who need insurance the most and would leave many consumers without assistance when they need it most. Unlike group insurance consumers, individuals shopping for coverage do not have the sophistication of an employer when making coverage decisions. Consumers in the individual market need the protections afforded by State regulation.

NAIC's Principles for Federal Reform

In their search for effective solutions, the nation's insurance regulators have identified seven basic principles by which federal health insurance reform legislation can be analyzed. These principles are intended to keep the focus on the needs of consumers and the true causes of the current crisis. These principles are:

Principle 1: The rights of all consumers must be protected. States already have patient protections, solvency standards, fraud prevention programs, and oversight mechanisms in place to protect consumers; unless new federal standards equal or exceed existing State standards and enforcement they should not be preempted. Any new insurance arrangement purporting to increase the number of people with health insurance will be a failure if the insurance arrangement is not solvent and cannot pay the claims of those who have placed their trust in it. Further, all new proposals must preserve access to sufficient grievance and appeals procedures, and also assure that benefits and provider networks are adequate. Consumers must always be protected from fraud and misinformation.

Principle 2: Existing State reforms and assistance programs must be supported, not degraded. As you know, States have already enacted small group purchasing pools, high-risk pools, and other reforms to increase the availability and affordability of health insurance. Federal reforms must not erode these successful efforts by permitting good risk to be siphoned off through manipulation of benefit design or eligibility for benefit provisions.

Principle 3: Adequate consumer education must be provided. Federal reform will be complicated, creating new insurance choices for many Americans. The federal government must coordinate with existing State consumer education programs to ensure consumers are able to make informed choices.

Principle 4: The overarching issue of rising healthcare costs must be addressed. Federal efforts to increase access to insurance will not be successful over time unless the overriding issue of rapidly rising healthcare costs is also addressed. Insurance is a mechanism for paying for health care and has had only limited success in controlling costs, but insurance is not the cause of those skyrocketing costs. There are multiple drivers of healthcare costs, and they in turn are driving up the cost of health insurance. To bring long-term stability to the healthcare system efforts must include provisions to address cost drivers and control rising healthcare costs.

Principle 5. Current cost shifting must not be exacerbated. Inadequate reimbursement payments have led to cost shifting to the private sector. Unfunded federal mandates to States have shifted costs onto State governments. The cost of providing care to the uninsured is also shifted, driving up rates for insurance consumers. These actions have resulted in higher overall costs and decreased access for many consumers. Federal health insurance reform legislation must address cost shifting.

Principle 6: The position of less healthy individuals must be protected. Both State and the federal governments have begun the process of reforming tax structure and other financial policies to encourage individuals to be more responsible consumers of health care. Emerging industry trends reflect developments in benefit and plan designs that create incentives for responsible consumer behavior in health care purchasing decisions. Public policy decisions must assure that new designs do not shift costs to such an extent that insurance no longer offers meaningful protection to the sick or discourage appropriate care.

Federal legislation should encourage appropriate usage of the health care system without inappropriately withholding needed health care services to the sicker patient.

Principle 7: Public policymakers should be wary of allowing the creation of insurance companies without appropriate oversight. Remember, legislation that allows alternative risk-bearing arrangements must acknowledge that it is allowing the creation of new insurance companies. A mere change in the name of the arrangement does not transform its essential insurance nature and function – the acceptance and spreading of risk. To allow such new insurance companies to be formed outside the existing regulatory structure will create an unlevel playing field that is unfair to existing insurers and potentially harmful to consumers. To do so without providing adequate additional federal resources to ensure sufficient oversight of new entities will be disastrous.

Alternatives for Real Reform

As mentioned earlier, States are experimenting with a variety of strategies for reducing the number of uninsured. A majority of States have created high-risk pools to assist "uninsurable" individuals. Several States are utilizing reinsurance mechanisms, with various degrees of success. The most recent effort by the State of New York in its Healthy New York program has used a retrospective reinsurance mechanism, subsidized by State tax dollars, that has resulted in about 70,000 new insureds, all low wage workers who were formerly uninsured.

As another example, in Maine, the State enacted the Dirigo Health Plan, intended to provide coverage for 180,000 State residents. The plan has two components: 1) expansion of Medicaid and SCHIP to parents with incomes up to 200% of the federal poverty line and to everyone earning less than 125% of the federal poverty line; and 2) establishment of a public/private plan to cover business with 2-50 employees, the self-employed, and unemployed and part-time workers. The plan is in its early stages of implementation, and State policymakers have high hopes for its success.

All of these reforms have been carefully crafted, weighing the needs of all populations and preserving key consumer protections. The federal government should look to these and other State programs for possible solutions to the uninsured crisis, not proposals that sweep aside State innovations and reforms in favor of injurious federal policies.

Conclusion

All of us recognize that it is very important to make health insurance available all Americans. The States have begun to address this problem, and will continue to do so. However, the problem is complex and does not lend itself to easy solutions.

The federal government and the States need to work with healthcare providers, insurers and consumers to implement true reforms that will curb spending and make insurance more affordable. We stand ready to work with members of Congress to draft effective reforms that will address both the affordability and availability issues facing individuals. Together, real solutions to this critical issue can be found.